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EXAMINER

SWARTZ, RODNEY P

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



Art Unit: 1645

### **DETAILED ACTION**

1. Applicant's Response to Office Action, received 20 November 2008, is acknowledged.

Claims 26, 29 and 31 have been amended.

2. Claims 26, 28, 29, 31-42, 45, 46 and 48-52 are pending and under consideration.

### **Rejections Withdrawn**

3. The rejection of claims 26 and 28 under 35 U.S.C. 112, second paragraph, as being indefinite for complementary polynucleotide, is withdrawn in light of the amendment of the claims.

4. The rejection of claims 29 and 31 under 35 U.S.C. 112, second paragraph, as being indefinite for complementary polynucleotide, is withdrawn in light of the amendment of the claims.

### **Claim Rejections - 35 USC § 112**

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 45 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim recites "a purified polynucleotide of 1488 bp designated as alkA and consisting of SEQ ID NO:27".

Art Unit: 1645

The sequence listing of SEQ ID NO:27 is only 1458 bp in length. Clarification of this discrepancy is required.

### **Claim Rejections - 35 USC § 102**

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claim 46 is rejected under 35 U.S.C. 102(e) as being anticipated by Fleischmann et al (U.S. Pat. No. 6,294,328).

One of the embodiments of claim 46 is a purified polynucleotide comprising SEQ ID NO:31. Fleischmann et al teach a purified polynucleotide (SEQ ID NO:1) which comprises the instant SEQ ID NO:31, i.e., residues 4030490-4031401 (see sequence listings). Fleischmann et al teach a purified polynucleotide (SEQ ID NO:2) which comprises the instant SEQ ID NO:31, i.e., residues 4022571-4023482 (see sequence listings).

One of the embodiments of claim 46 is a purified polynucleotide comprising SEQ ID NO:30. Fleischmann et al teach a purified polynucleotide (SEQ ID NO:1) which comprises the instant SEQ ID NO:30, i.e., residues 4393446-4394165 (see sequence listings).

### **Conclusion**

9. Claims 45 and 46 are rejected.

Art Unit: 1645

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Wednesday from 9:00 AM to 7:30 PM EST. Thursday is the examiner's work at home day.

If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's Supervisor, Robert B. Mondesi (571)272-0956.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rodney P. Swartz, Ph.D./

Primary Examiner, Art Unit 1645

January 30, 2009